

58 Am. Jur. 2d Occupations, Trades, and Professions § 2

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Occupations, Trades, and Professions
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I. Regulation, in General

A. In General

§ 2. State and municipal powers

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West's Key Number Digest

West's Key Number Digest, [Licenses](#)  2 to 6

Forms

[Am. Jur. Legal Forms 2d § 190:4](#) (Application for license to practice trade or profession—General form)

[Am. Jur. Pleading and Practice Forms, Occupations, Trades, and Professions § 4](#) (Complaint, petition, or declaration—To enjoin party from engaging in particular occupation or profession without license)

[Am. Jur. Pleading and Practice Forms, Occupations, Trades, and Professions § 8](#) (Complaint, petition, or declaration—Allegation—Invalidity of regulatory ordinance—Arbitrary power to deny occupational license)

[Am. Jur. Pleading and Practice Forms, Occupations, Trades, and Professions §§ 14 to 16, 19 to 25](#) (Licenses and Examinations—Grant and Refusal—Forms)

[Am. Jur. Pleading and Practice Forms, Occupations, Trades, and Professions §§ 28 to 34, 37 to 41, 43, 45 to 51](#) (Licenses and Examinations—Suspension, Revocation, Reinstatement, and Renewal—Forms)

The states have a compelling interest in the practice of professions within their boundaries, and as part of their power to protect the public health, safety, and other valid interests, they have broad power to establish standards for licensing practitioners and regulating the practice of professions.¹ A person's right to engage in any lawful occupation is subservient to the legitimate right and duty of a State to protect the health, safety, and welfare of its citizens, through the valid exercise of its police power, and all occupational licensing emanates from this authority.²

A legislature can, in its exercise of the police power, regulate and require licensure of professionals as it sees fit, but any law in furtherance of the police power must be reasonable and not arbitrary.³

A municipality has a legitimate concern for the operation of businesses in a lawful manner.⁴ Municipal corporations may, under proper grants of legislative or constitutional power, regulate any trade, occupation, calling, or business, the unrestrained pursuit of which might affect injuriously the public health, morals, safety, comfort, or welfare or might result in fraud or imposition on the public.⁵

A court's inquiry into the constitutionality of a city's licensing provisions for a business is not concerned with the economic impact of the restrictions on a particular business but with the economic effects of the ordinance in the aggregate rather than at the individual level.⁶ Moreover, the regulation of certain types of businesses due to their inherent character is not general and comprehensive like zoning, but instead, such regulation is special and limited in scope and governed by a consideration of the circumstances, at the time of application, as to the particular business under consideration, the applicant, and even the location proposed.⁷ That is, licensing laws typically regulate establishments based on the type of business that they conduct, while zoning laws regulate them based on their location.⁸

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Footnotes

- 1 [Gade v. National Solid Wastes Management Ass'n](#), 505 U.S. 88, 112 S. Ct. 2374, 120 L. Ed. 2d 73 (1992); [Locke v. Shore](#), 634 F.3d 1185 (11th Cir. 2011), cert. denied, 132 S. Ct. 1004 (2012).
The power of the State to regulate and license professions is not limited to the fitness to practice but may also include requirements to protect and promote the public health, safety, morals, peace, quiet, and law and order. [Miller v. Sloan, Listrom, Eisenbarth, Sloan and Glassman](#), 267 Kan. 245, 978 P.2d 922 (1999), as modified, (July 23, 1999).
- 2 [Linkus v. Maryland State Bd. of Heating Ventilation, Air-Conditioning and Refrigeration Contractors](#), 114 Md. App. 262, 689 A.2d 1254 (1997).
It is properly within a State's police power to regulate and license professions, especially when public health concerns are affected. [National Ass'n for Advancement of Psychoanalysis v. California Bd. of Psychology](#), 228 F.3d 1043 (9th Cir. 2000).
As to exercise of police power, generally, see [Am. Jur. 2d, Constitutional Law § 344](#).
As to businesses affected with a public interest as subject to regulation under police power, see [Am. Jur. 2d, Constitutional Law § 359](#).
As to the regulation of trades, callings, etc., as a public health measure, generally, see [Am. Jur. 2d, Health § 57](#).
- 3 [Allhusen v. State By and Through Wyoming Mental Health Professions Licensing Bd.](#), 898 P.2d 878 (Wyo. 1995).
- 4 [Pentco, Inc. v. Moody](#), 474 F. Supp. 1001, 16 Ohio Op. 3d 189 (S.D. Ohio 1978).
A municipality may require a license in order to help it regulate under its general police power. [Bernardsville Quarry, Inc. v. Borough of Bernardsville](#), 129 N.J. 221, 608 A.2d 1377 (1992).
- 5 [Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 408 to 415](#).
As to grant of municipal powers by State, see [Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 163 to 169](#).
- 6 [Jake's, Ltd., Inc. v. City of Coates](#), 284 F.3d 884 (8th Cir. 2002).
- 7 [Fairfax MK, Inc. v. City of Clarkston](#), 274 Ga. 520, 555 S.E.2d 722 (2001).
- 8 [Guy v. Town of Temple](#), 157 N.H. 642, 956 A.2d 272 (2008).